

REMARKS

This paper is responsive to the Office Action mailed May 25, 2006.

In Disposition of Claims, the Examiner states that claims 1-15, 24-26, 40 and 41 are pending in this application. Actually, the pending claims in this application are 1-15, 24-26, and 40-42.

The Examiner's rejections assume that claim 42 was still pending and therefore the description of the claims pending in the application under the paragraph of the Office Action Summary is believed to be merely a typographical error.

In paragraph 6 of the Office Action Summary, claims 1, 3-4, 7-10, 14-15, 24-26 and 40-42 have been rejected.

Under paragraph 5, claim 2 has been allowed and under paragraph 7, claims 5, 6 and 11-13 have been objected to.

Rejection under 35 U.S.C. 102(e)

Claims 1, 3, 4, 7-9, 15 and 40-42 have been rejected "under 35 U.S.C. 102(3) as being anticipated by NPL (Non Patent Literature-IES 2000, Atlanta.com/product, dated 7/2/2003).

This rejection is respectfully traversed. As stated in the attached Declaration of Kevin Surace, the particular Non Patent Literature cited by the Examiner describes the invention which has been made by Applicants. Under 35 U.S.C. § 102(e) "a person shall be entitled to a patent unless ... (e) the invention was described in (1) an application for patent, published under § 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent...". Accordingly, this rejection of the claims

as anticipated under 35 U.S.C. § 102(e) is believed improper since the Non Patent Literature is not an application for patent or a patent granted on an application for patent by another filed in the United States before the invention by the application for patent. Accordingly, this rejection is respectfully requested to be withdrawn.

Perhaps, the Examiner meant to reject this application under 35 U.S.C. § 102(a) which states that:

A person shall be entitled to a patent unless ... (a) the invention was known or used by others in this country or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.

Assuming that this is the basis on which the Examiner intended to reject the claims as being anticipated by the NPL, Applicants also respectfully traverse this rejection. As stated in the attached Declaration of Kevin Surace, the NPL cited by the Examiner is, in fact, based upon Applicants' invention. In fact, on page 6 of the NPL, the drawing disclosed there is a drawing which was made by Mr. Surace and provided by Mr. Surace to a potential distributor for the Assignee, Quiet Solution, Inc. of this application. Accordingly, claims 1, 3, 4, 7-9, 15 and 40-42 are being rejected on Applicants' invention which apparently was made public by this potential distributor for the product just before the application was filed. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

Claims 8, 14, and 24-26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over NPL (IES 200 Atlanta Product). This rejection is also respectfully traversed. The NPL document describes Applicants' invention. As stated in the attached Declaration of Mr. Surace, the NPL is based upon materials provided by Mr. Surace to a

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distributor for Quiet Solution, Inc., the assignee of this application. Accordingly, this rejection is not based upon material provided by another but rather upon Mr. Surace's own material. Accordingly, withdrawal of this rejection is respectfully requested.

Claim Rejection under 35 USC § 112


Claims 24-26 have been rejected "under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention."

The Examiner points out that dependent claim 26 is indefinite because "the depending claim cannot contradict or broaden the claim it depends from." Claims 24-26 have been amended to overcome this rejection. Claim 24 is now the broadest claim and claim 26 further limits the structure recited in claim 24.

In view of the above remarks and the attached declaration of Mr. Surace, withdrawal of the rejection and allowance of claims 1, 3-4, 5, 6, 7-10, 11-13, 14, 15, 24-26 and 40-42 is respectfully requested. Should the Examiner's action be other than allowance of these claims, the Examiner is requested to telephone Applicants' attorney at (408) 392-9250 ext. 207.

Certificate of Transmission: I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 571-273-8300 on July 10, 2006.

Respectfully submitted,


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 7/10/06
Attorney for Applicant(s) Date of Signature

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